



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Barrett and Blandford Associates, Inc.

**File:** B-240723

**Date:** September 12, 1990

Richard J. Barrett for the protester.  
Robert Sukovich for Union Instrument Company, Charles R. Young for Varo, Inc., and Andrew De Cicco, Esq., for ITT Defense, Inc., interested parties.  
Edward J. Korte, Esq., Department of the Army, for the agency.  
Aldo A. Benesjam, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest of alleged solicitation improprieties which are apparent on the face of the solicitation is dismissed as untimely where not filed until after the closing date for receipt of initial proposals.
2. Protester's speculation regarding contracting agency's evaluation of acceptability of other offerors' proposals is premature and thus provides no basis for protest where no award decision has been made.

### DECISION

Barrett and Blandford Associates, Inc. (BBA) protests any award of a contract under request for proposals (RFP) No. DAAB07-90-R-G444, issued by the U.S. Army Communications-Electronics Command (CECOM) for 11,645 AN/PVS-5C face mask assemblies. BBA contends that the RFP contains a "Special Standards of Responsibility" section that improperly restricts competition.

We dismiss the protest.

The RFP was synopsisized in the Commerce Business Daily (CBD) on April 9, 1990. CECOM issued the RFP on May 8 as an unrestricted solicitation with a closing date of June 26. CECOM received BBA's proposal at 9:07 a.m. on June 29, as evidenced by CECOM's time-date stamp on the envelope

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containing BBA's proposal. The envelope was postmarked on June 28.

By letter dated July 3, CECOM informed BBA that its proposal would not be considered since it had been received after the June 26 closing date. By letter dated July 5, BBA protested to CECOM, alleging that the RFP's Special Standards section restricted competition. In a letter to BBA dated July 18, CECOM denied BBA's protest, reaffirming its position that BBA's proposal was late and therefore would not be considered for award. BBA filed this protest in our Office on August 9, reiterating its objection to the RFP's Special Standards section.

The Special Standards section in the RFP explicitly set out certain qualifications that offerors were required to meet in order to be considered for award. Thus, BBA's challenge to the Special Standards section concerns an alleged solicitation impropriety apparent from the face of the solicitation which under our Bid Protest Regulations was required to be filed before the closing date for receipt of proposals on June 26. 4 C.F.R. § 21.2(a)(1) (1990). BBA did not protest this issue to either the agency or our Office until after the closing date for receipt of proposals. Accordingly, this ground of protest is untimely.<sup>1/</sup>

To the extent that BBA protests the rejection of its proposal as late, our Bid Protest Regulations require that a protest of other than an apparent solicitation impropriety be filed within 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2); A-Supply Line, Inc., B-230922, Apr. 8, 1988, 38-1 CPD ¶ 354. BBA had notice of the rejection of its proposal as late when it received CECOM's July 3 letter. In the absence of evidence to the contrary, we assume that mail is received within 1 calendar week from the date it was sent. Republic Maintenance of Kentucky, Inc., B-231123, supra. BBA's protest to our

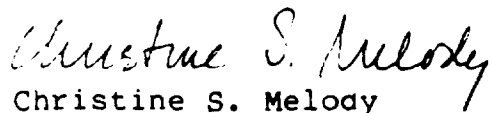
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<sup>1/</sup> While, as noted above, CECOM considered BBA's untimely protest and denied it, our Regulations provide that in order for our Office to consider a protest after an initial agency-level protest has been filed, the initial protest must have been timely filed with the agency. 4 C.F.R. § 21.2(a)(3). The fact that an agency considers an untimely agency-level protest does not waive our timeliness requirements. See Republic Maintenance of Kentucky, Inc., B-231123, June 2, 1988, 88-1 CPD ¶ 524.

Office, filed August 9, nearly a month after it was aware of this basis for its protest, is therefore untimely.

BBA also alleges that CECOM has accepted proposals from offerors who do not meet the RFP's Special Standards. This ground of protest is premature since CECOM has made no determination regarding the acceptability of any of the proposals it received under the RFP.

The protest is dismissed.

  
Christine S. Melody  
Assistant General Counsel